

A "retailer maintaining a place of business in Illinois", as described in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. (This is a GIL).

May 20, 1999

Dear Xxxxx:

This letter is in response to your letter dated April 15, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

1. COMPANY, is considering supplying Architectural and Engineering Services to clients whose corporate headquarters may be located either in your state or outside your state. The project site is located within your state. All our employees will be located in STATE, no one will enter your state. We will not have an office or other property in your state. We will not solicit sales within your state.

In this scenario, are we 'transacting business' in your state? Are we subject to your state's Income Tax, Franchise Tax, Sales/Use Tax or any other tax?

2. Same scenario, except an employee will enter your state to provide Contract Administration Services in the form of one or more visits to the project site. Actual time at the site will vary, but I estimate that it will range from two to four hours per visit.

In this scenario, are we 'transacting business' in your state? Are we subject to your state's Income Tax, Franchise Tax, Sales/Use Tax or any other tax?

...

Thank you for your assistance.

We are unable to issue a definitive letter ruling on the issue of whether your company would have nexus for Retailers' Occupation/Use Tax purposes. The Department has found that determinations of nexus in this area are so highly fact-dependent that even the disclosure requirements of 2 Ill. Adm. Code 1200.110(b)(1) can rarely be satisfied within the context of a written narrative. Consequently, the best manner to determine nexus in this area is for a Department auditor to examine all relevant facts and information. We were also unable to

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ascertain the exact nature of the services that you provide in order to determine whether Retailers' Occupation Tax and Use Tax apply or whether the Service Occupation Tax and Service Use Tax apply. The following is a general discussion of nexus in Illinois as those principles are applied to Retailers' Occupation Tax. If you would like more information regarding service taxes, please let us know.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.